

2018-2019

AMERICAN BAR ASSOCIATION

**Standing Committee on
Public Protection**

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Dear Mr. Miller and Mr. Minkoff:

The Standing Committee on Public Protection in the Provision of Legal Services (Public Protection Committee) appreciates your joining us and members of the Standing Committee on Professional Regulation to discuss the New York State Bar Association's (NYSBA) proposed resolution, General Provisions for Regulation of Online Providers of Legal Documents and the Statement of Best Practices. Your willingness to discuss the proposal furthers the overall goal of collaboration and we are sincerely appreciative.

The Public Protection Committee convened immediately following our joint meeting to further discuss the NYSBA proposal. First, the Public Protection Committee agrees that some minimum standards to ensure that consumers are aware of risks associated with the use of online legal forms and that basic protections are necessary. However, the Committee does not believe that this proposal, in its current form, accomplishes that goal. We are, therefore, requesting that the NYSBA not refile this proposal for consideration by the ABA House of Delegates.

The concerns expressed in our October 1, 2018 email remain. From the Public Protection Committee's perspective, chief among those concerns are the potential antitrust implications. The proposal specifically excludes not-for-profit providers of online legal forms, which the Committee believes heightens the perception that the proposal is aimed at protecting the market for lawyers and not necessarily the interests of consumers. Additionally, the absence of substantive data to support a pattern of harm reinforces the anti-competitive quality of the proposal.

While the proposal does not specifically address the unauthorized practice of law, its application to providers of online legal forms has clear UPL enforcement implications. Efforts to enforce against the unauthorized practice of law must be tailored to address specific harm. The failure to narrowly craft enforcement regulations aimed at nonlawyer providers of law-related services could potentially raise the ire of the FTC and threaten enforcement against UPL, generally. Having the American Bar Association, the largest representative of lawyers in the country, promote such broad efforts only increases that threat. The Public Protection Committee does not believe such action by the ABA is appropriate.

The Public Protection Committee looks forward to continuing to work with the NYSBA and other interested entities to develop minimal standards to protect consumers of online legal forms, while also promoting innovation and without limiting access.

If you have any questions, please feel free to contact me.

Respectfully,

A handwritten signature in black ink that reads "Frank X. Neuner, Jr." with a stylized flourish at the end.

Frank X. Neuner, Jr., Chair
Standing Committee on Public Protection
in the Provision of Legal Services

cc: Paula J. Frederick, Chair
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